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C O N F I D E N T I A L SAIGON 4872

CINCPAC FOR POLAD

SUBJECT: THE PROBLEM OF THE CAMBODIAN MINORITY IN SOUTH VIET-NAM.

1. AFTER I HAD DISCUSSED MORE HIGHLY CLASSIFIED ASPECTS OF THE CAMBODIAN SITUATION WITH PRESIDENT THIEU MARCH 30, I TOOK THE OCCASION TO REFER TO THE CURRENT PROBLEMS WITH THE CAMBODIAN MINORITY IN SVN AND MADE SOME SUGGESTIONS. I SAID THAT ALTHOUGH THIS WAS A DOMESTIC PROBLEM, RECENT DEVELOPMENTS IN CAMBODIA HAD PLACED IT IN A DIFFERENT CONTEXT AND PERHAPS THE TIME HAD COME TO TAKE ANOTHER LOOK AT IT ON THE GROUND THAT "CIRCUMSTANCES ALTER CASES." IF PROGRESS COULD BE MADE IN RELATIONS WITH THE "VIETNAMESE OF KHMER DESCENT," THIS COULD HAVE FAVORABLE REPERCUSSIONS IN RELATIONS WITH THE RKG AND MIGHT INCIDENTALLY BENEFIT THE VIETNAMESE MINORITY IN CAMBODIA WHO COULD BE IN SOME JEOPARDY. IT COULD THUS BE SAID THAT IN A SENSE AN ENLIGHTENED VIETNAMESE POLICY TOWARD THE CAMBODIAN MINORITY IN SVN COULD HAVE AN EFFECT EVEN ON THE OUTCOME OF THE WAR.

2. I REALIZED, I SAID, THAT BOTH THE EXECUTIVE AND THE LEGISLATURE ARE TAKING A FIRM STAND AGAINST EXPLICITLY RECOGNIZING

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CAMBODIA—INTERNATIONAL LAW ASPECTS

The basis under international law for the present actions on Cambodian territory by the armed forces of the United States and South Viet-Nam is the right of collective self-defense against an armed attack recognized in Article 51 of the United Nations Charter. North Viet-Nam has for years been engaged in a continuing armed attack against South Viet-Nam. In accordance with the customary law of self-defense, legitimate measures of collective self-defense by South Viet-Nam and the United States are those that are reasonably required to defend against the attack and are proportionate to the threat posed by the attack.

Under the customary laws of war, Cambodia as a neutral country has the duty to prevent its territory from being used by any party to the conflict as a military base or in any other way for the conduct of military operations. While international law is not clear on this point, a strong case can be made that where the neutral is clearly not in a position to prevent the use of its territory in an attack on a belligerent, a belligerent may, in the exercise of its right of self-defense take action on the neutral's territory. The problem in the present Cambodian case is to show why, in view of the long use of Cambodia by North Vietnamese forces, the dangers to South Viet-Nam and our forces there became suddenly so urgent that we were compelled to take steps we previously had refrained from taking. Accordingly, we should emphasize the action of the North Vietnamese troops in the last few weeks in driving Cambodian troops and officials out of the border areas and destroying their capacity to exercise any effective control on North Viet-Nam's use of Cambodian territory.

The following brief statement summarizes our case under international law:

> "The measures we are taking are legitimate measures of collective self-defense against the continuing armed attack by North Viet-Nam. These measures were necessitated by recent North Vietnamese actions in violation of Cambodia's neutrality that have seriously increased the danger to United States and allied forces in South Viet-Nam. Our actions are limited and proportionate to the aggressive military operations of the North Vietnamese forces and the threat they pose and will be terminated as soon as they are no longer required for the defense of the Republic of Viet-Nam and our forces there."

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Constitutional Basis for United States Actions
Against Sanctuaries in Cambodia

United States participation in military operations against the North-Vietnamese and Viet Cong sanctuaries in Cambodia has been taken under the President's Constitutional authority as Commander in Chief of the Army and Navy of the United States (Art. II, sec. 2) Whatever the full scope of this Constitutional authority may be, it clearly extends to the taking of military measures necessary for the defense of United States forces in the field which have come under armed attack.

The action in Cambodia should not be viewed as an independent use of the U.S. armed forces involving the general question of the President's responsibility to Congress under the power to "declare war". It should be defended as a Presidential action under his Constitutional authority to take all reasonable action to protect our troops which were already committed in a conflict long under way when this Administration took office and to bring about their withdrawal under circumstances contributing to a durable peace.

We should not rely on the SEATO Treaty or the Tonkin Gulf Resolution, both of which authorize action in defense of Cambodia only with the consent of the Cambodian Government. In addition, the Executive Branch has indicated to the Senate that the Tonkin Gulf Resolution related to crisis circumstances long since passed and stated that we would not rely on this Resolution in the conduct of our foreign relations.

There are no statutory impediments for the action taken by the President. The Military Appropriations Act for fiscal 1970 prohibits the use of general Department of Defense funds for the introduction of American ground combats into Laos or Thailand but says nothing about Cambodia.

[redacted]